

## *Conservation Restriction*

### Philip C. Beals Trust Conservation Restriction to The Town of Southborough



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#### I. GRANTOR CLAUSE:

We, Philip C. Beals and Thomas R. Mountain, Trustees of the Philip C. Beals Trust, u/d/t dated July 31, 1935 and recorded with the Worcester District Registry of Deeds in Book 4828, Page 68, c/o Philip C. Beals, 2 Chestnut Hill Road, Southborough, MA 01772, and our successors and assigns ("Grantors"), acting pursuant to Sections 31, 32 and 33 of Chapter 184 of the General Laws, grant with quitclaim covenants to the Town of Southborough, a Massachusetts municipality with a mailing address of 17 Common Street, Southborough, MA 01772, under the care, custody, and control of its Conservation Commission pursuant to M.G.L. c. 40 § 8C and their successors and permitted assigns (collectively, the "Grantee") in perpetuity and exclusively for conservation purposes, the following described Conservation Restriction on several parcels of land located on Chestnut Hill Road and Main Street in the Town of Southborough, Massachusetts, constituting approximately 108.91 acres, said parcels being a portion of the property described (i) in a deed recorded in the Worcester South Registry of Deeds (the "Registry") in Book 4725 at Page 594 and shown as "Parcel A" on a plan of land (entitled "Plan of Land in Southborough, Mass."; dated August 29th, 1960) recorded in the Registry as Plan Book 250 Plan 38, excepting therefrom 16,487 sq. ft. deeded to David C. Ekberg and Sandra N. Ekberg by deed dated October 18, 1974 recorded in Book 5605 Page 219 and shown on a plan recorded in Plan Book 404 Plan 35 and (ii) in a deed recorded in the Registry in Book 4593 at Page 444 and shown as "Lot B-2" on a plan of land (entitled "Plan of Land in Southborough, Mass."; dated August 6th, 1965) recorded in the Registry as Plan Book 292 Plan 78, which description is attached hereto as Exhibit A (hereinafter referred to as the "Premises").

#### II. PURPOSES:

The Premises, defined above, contain unusual, unique or outstanding qualities the protection of which in their predominately natural, vegetated or open condition will be of benefit to the public (the "Purposes"). These qualities include:

- (a) Upland meadows currently used for agriculture and animal husbandry, including some Prime Farmland as identified in the USDA Soil Survey of Worcester County, the continuation of which will preserve uses that are integral to the history of the Premises and of the Town;
- (b) Scenic views from Main Street and Chestnut Hill Road identified as "Noteworthy" and "Distinctive" in the Massachusetts Landscape Inventory (MA

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Department of Environmental Management, 1981), the preservation of which is a primary purpose of this Conservation Restriction

- (c) Approximately 109 acres of managed woodlands, meadows, wetlands, and agricultural fields, providing quality wildlife habitat, river and watershed protection, flood prevention and pollution mitigation;
- (d) General public access for the purposes of Passive Recreation as defined in Article III, including but not limited to walking and cross-country skiing, and further described in Section VIII of this conservation restriction;
- (e) Direct adjacency to approximately 4.4 acres of land owned by Sudbury Valley Trustees, to approximately 29.8 acres of land owned by the Southborough Open Land Foundation, to approximately 48 acres of land held under a Conservation Restriction granted to Sudbury Valley Trustees (the "Beals CR"), and to the Hultman Aqueduct and abutting lands owned by the Commonwealth of Massachusetts, Department of Conservation and Recreation, which connect to conservation lands in the Town of Westborough owned both by the Commonwealth of Massachusetts and by Sudbury Valley Trustees, Inc.. Furthermore, protection of the Premises will buffer these adjacent conservation areas as recommended in the Greenways Plan for the SuAsCo Watershed (Sudbury Valley Trustees, April 2000), and;
- (f) Identification as a property "of Conservation and Recreation Interest" in the Town of Southborough's 1999 Open Space and Recreation Plan.

### III. DEFINITIONS OF TERMS

- (a) Commercial Recreation: Recreation conducted or allowed for profit.
- (b) Educational Activities: A program of instruction for the development of knowledge related to fostering the Purposes of this Conservation Restriction.
- (c) Farmstead: The Farmstead Area defined in Section IV.B.1 below.
- (d) Passive Recreation: Low impact, quiet, generally contemplative, non-motorized recreation (except that motorized wheel chairs or similar equipment reasonably necessary to enable handicapped members of the public to access the Premises shall be allowed) which is compatible with the Purposes of this Conservation Restriction, including, but not limited to: walking, trail running, cross-country skiing, snowshoeing, sledding, bird watching, nature study, photography, sketching, and painting.

#### **IV. PROHIBITED ACTS AND USES, EXCEPTIONS THERETO, AND PERMITTED USES**

(A) Prohibited Acts and Uses. Subject to the exceptions set forth in Sections IV (B) and V below, the following acts and uses are prohibited on the Premises:

- 1) Constructing or placing of any building, tennis court, landing strip, mobile home, swimming pool, fences, asphalt or concrete pavement, sign, billboard or other advertising display, antenna, utility pole, tower, conduit, line, wind turbines, or other temporary or permanent structure, utility, or facility on, under, or above the Premises;
- 2) Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit except as necessary for proper soil conservation and then only in a manner which does not impair the Purposes of this Conservation Restriction;
- 3) The demolition or removal of existing stone walls. However, notwithstanding the foregoing, subject to all state and local statutes, regulations and bylaws, including but not limited to local and state scenic road statutes, Grantors reserve the right to widen or to make new breaks in existing stone walls so long as the new or existing break does not exceed 20 (twenty) feet in width, as needed for agricultural and forestry activities as permitted in Sections V (6) and V (7) herein, so long as these uses continue. Grantors also reserve the right to construct, maintain, repair, and replace new stone walls on the Premises, provided such activity is consistent with the Purposes of this Conservation Restriction;
- 4) Placing, filling, storing or dumping on the Premises of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other substance or material whatsoever or the installation of underground storage tanks;
- 5) Cutting, removing or otherwise destroying trees, shrubs, grasses or other vegetation, including leaf litter;
- 6) The conveyance of a part or portion of the Premises alone, or the division or subdivision of the Premises is prohibited without notice to and the approval of the Grantee, as provided for in Section VI. However, the conveyance of the Premises in its entirety, or the conveyance of the additional legal lot reserved pursuant to Section IV in B.1) below shall be permitted, subject to the express prior written consent of Grantee, which consent shall not be unreasonably withheld;
- 7) Activities detrimental to wildlife habitat, drainage, flood control, water conservation, water quality, erosion control or soil conservation including without limitation the use of motorized recreational vehicles, except for emergency and handicapped access vehicles;
- 8) Commercial recreational activities;
- 9) Commercial hog farming and commercial piggeries; and



10) Any other activity on or use of the Premises that is inconsistent with the Purposes of this Conservation Restriction as specified herein and pursuant to Sections 31, 32, and 33 of Chapter 184 of the General Laws of Massachusetts.

(B) Reserved Rights. Notwithstanding any provisions of Section IV A above, Grantors reserve to themselves and to their successors and assigns the right to conduct or permit the following activities on and uses of the Premises, but only if such uses and activities do not materially impair the Purposes of this Conservation Restriction:

1) Exclusively within the "Farmstead Area" as shown on a plan of land (entitled "Farmstead and Parking Area Plan of Land in Southborough, Mass."; dated May, 2006) filed with the Grantee and attached hereto in reduced form as Exhibit B (hereinafter referred to as the "Farmstead") which may be subject to modification to resolve boundary line ambiguities with the written consent of Grantors and Grantee:

- (a) Following written notice to Grantee pursuant to Section IV A below, subdivision of the Farmstead to create no more than one (1) additional legal lot which may be separately conveyed, provided, however, that the resulting additional lot shall be no larger than the smallest buildable lot authorized by the Town of Southborough zoning bylaw then in effect (the "Small Parcel"), and on such parcel the construction, use, maintenance, repair, renovation, replacement and alteration of no more than one (1) single family residence shall be authorized with appurtenant structures or improvements customary for a single family residence, one (1) paved or unpaved driveway, a septic system, a water supply well and utilities (above or below ground) to serve such residence, provided that all structures in the aggregate on such "Small Parcel" (excluding the driveway and the septic system) do not exceed 4,000 square feet of floor area, including any garages, porches, or decks;
- (b) The use, maintenance, repair, interior renovation, or alteration, of the two (2) existing residential structures,
- (c) The use, maintenance, or repair of existing driveways, septic systems, water supply wells and utilities (above or below ground) to serve any of the foregoing uses, structures and improvements that are located within the Premises. The demolition, reconstruction, exterior renovation or alteration, addition to, or removal and/or replacement of said residences, appurtenant structures, driveway, septic system, water supply well or utilities is also permitted, provided, however, Grantors first notify Grantee according to Section VIA below and further provided that the residence located at 9 Chestnut Hill Road shall not exceed 3,500 square feet, including any garages, porches, or decks; and further provided that the residence at 7 Chestnut Hill Road shall not expand beyond its existing footprint, including the existing deck.

- (d) Pruning, clearing, and planting of vegetation without limitation, including landscaping and gardening;
- (e) The construction, use, maintenance, repair, renovation, replacement and alteration of appurtenant structures or improvements customary for agricultural uses, and containing in the aggregate no more than 10,000 additional square feet of floor area, provided that any such agricultural structures must be incidental to agricultural or animal husbandry operations, carried on in accordance with sound agricultural practices as described under Section V, paragraph 6 below, permissible under the then current zoning bylaw of the Town of Southborough, and must not include structures that are used for the indoor riding of animals;
- (f) The construction, use for the marketing of agricultural products of which 51% or more are grown on the Premises, maintenance, repair, renovation, replacement and alteration of one (1) retail farmstand, not to exceed 2,000 square feet of floor area, provided, however, that said farmstand shall be located on the Farmstead and its use shall be consistent with all municipal limitations, laws, zoning, rules, and regulations regarding farmstands.
- (g) The excavation and removal from or the import, placement, and fill to the Farmstead of soil, gravel or other mineral resource or natural deposit shall be authorized only to the limited extent as may be required to construct authorized buildings, structures, improvements and landscaping; for the installation, maintenance, or removal of septic systems, utilities, and other underground structures; for the removal of underground tanks, if any; for the maintenance of good drainage or soil conservation practices; or for other permissible uses of the Farmstead; provided, however the foregoing permitted activities shall comply with all applicable laws and regulations.

**V. ADDITIONAL RESERVED RIGHTS TO THE GRANTORS: THE FOLLOWING ITEMS IN THIS SECTION ARE APPLICABLE TO THE ENTIRE PREMISES:**

1. Subject to prior notice and approval as outlined in Section VI below, the installation, maintenance, replacement, or removal of one (1) septic system, together with associated underground utilities and other underground structures, outside of the Farmstead to serve the structures and uses allowed under Section IV B and Section V Paragraph 6, provided no reasonable solution exists within the Farmstead. Excavation and removal from the Premises of soil, gravel or other mineral resource or natural deposit as may be incidental to such approved activities is also allowed, provided that such activities follow generally accepted soil conservation practices, and that disturbed areas are re-vegetated with native plant materials.
2. Subject to prior notice and approval as outlined in Section VI below, excavation and removal from the Premises of soil, gravel or other mineral resource or natural deposit as may be incidental to the maintenance or removal of existing underground tanks, septic systems,

utilities, and other underground structures, or to the maintenance of good drainage, soil conservation practices or to other permissible use of the Premises, provided that (a) such activities follow generally accepted soil conservation practices, (b) that any topsoil so excavated must remain on the Premises, and (c) disturbed areas are re-vegetated with native plant materials.

3. The maintenance of piles of limbs, brush, manure, leaves, compost, and similar biodegradable material, but not stumps, provided such piles are not unduly conspicuous from any public way, public trail, or public land, are not placed in any wetlands, and do not otherwise interfere with the Purposes of this Conservation Restriction.
4. Subject to prior notice, the placing of sight-pervious fences that do not interfere with the passage of wildlife to, from, and through the Premises or with the Purposes of this Conservation Restriction.
5. Subject to prior notice and approval as outlined in Section VI below, the digging or drilling of water wells, provided that such wells are for use of the extracted water principally on the Premises, and provided no reasonable solution exists within the Farmstead.
6. Agricultural, animal husbandry, and open meadow wildlife habitat management operations, in such a manner as to minimize negative impacts on water quality, reduce the physical disturbance to sensitive areas and reduce the discharge of sediment, animal waste, nutrients, and chemicals to surface waters using Best Management Practices that comply with the Clean Water Act and the Environmental Protection Agency's Nonpoint Pollution Control Program, including, without limitation:
  - (a) clearing, semi-annual mowing, and prescribed burning of vegetation;
  - (b) The grazing and pasturing of livestock according to the Farm Plan and sound agricultural practices as described therein and subject to all DEP and EPA clean water standards in the grazing of cows and storage of manure;
  - (c) The planting, maintenance, and harvest of crops or fruit- or nut-bearing trees, including the plowing of agricultural fields and the spreading of livestock manure and compost. No Christmas tree plantings or other plantings that impair scenic views shall be permitted within 600 (six hundred) feet of Chestnut Hill Road. Such plantings in excess of 10 acres or within 600 feet of Chestnut Hill Road are subject to the notice and approval of the Conservation Commission pursuant to Section VI. Said plantings shall not adversely impact public access and scenic views;
  - (d) The use of manure, compost, other soil supplements, fertilizers, pesticides, herbicides, and fungicides, provided, however, that such agricultural chemicals are registered under Commonwealth of Massachusetts regulations and are used in accordance and consistent with all pertinent federal, state, and municipal instructions, limitations, laws, zoning, rules, and regulations. The



use of any substance the application of which is subject to legal regulation shall be subject to the prior notice and approval of the Conservation Commission per the requirements of Section VI; provided, however, no notice and approval is required if the Grantor has filed a certificate with the Conservation Commission describing the use of such regulated substances and certifying that the application thereof will be in compliance with all applicable laws and regulations. Said notice and approval shall occur on an annual basis and such approval shall not be unreasonably withheld. Any cultivation of Genetically Modified Organisms ("GMOs") shall be in accordance with present and future state and municipal laws, if any.

- (e) Such operations and activities shall be in conformance with the current Farm Conservation Plan, prepared by the United States Department of Agriculture Natural Resources Conservation Service or successor agency, and any subsequent updates, which shall be provided to Grantee.
- (f) Subject to prior notice and approval from the Conservation Commission as outlined in Section VI, hunting for the sole purpose of predator and pest control, as incidental to farming activities, in conformance with all applicable laws, and as outlined in the farm and management plans. Said approval shall not be unreasonably withheld. No such hunting shall be conducted without closure of the trails. All trail closings shall be posted by the landowner at all public access points immediately. As per the Management Plan, no section of trail shall be closed for longer than three days, unless the landowner and the Town agree that a longer trail closing is necessary for safety, for wildlife protection, for crop protection, or for maintenance purposes. Notwithstanding the foregoing no notice and approval for said predator and pest control is required if the delay occasioned by said process would result in damage to crops or livestock; provided, however the Grantor conducts such predator and pest control with due regard to the safety of the public and in accordance with all applicable laws and regulations and further provided that Grantor furnish subsequent written notice and details of the emergency pest and predator control to Conservation Commission within 48 hours after such action is taken.

7. Subject to notification required by law, the commercial woodland and forestry operations, including the right to commercially harvest forest products, process firewood, conduct maple-sugaring operations, and conduct related or similar forest product operations, in accordance with a forest management plan (hereinafter the "Forestry Plan"). The guidelines and plan elements for the Forestry Plan are attached hereto as Exhibit C. The Forestry Plan for the Premises shall be prepared by a professional forester licensed to practice forestry in the Commonwealth of Massachusetts or by other individual and such plan shall be subject to notice and approval by Conservation Commission pursuant to Section VI below. Said professional forester must certify, within the Forestry Plan, that the plan is consistent with the intent and purpose of this Conservation Restriction. The Forestry Plan also shall provide for management of the Premises in a manner consistent with generally accepted "Best

Management Practices,” as those practices may be identified from time to time by appropriate governmental or educational institutions, and in a manner not wasteful of soil resources or detrimental to water quality or conservation. The Forestry Plan shall be updated periodically, particularly if new information or new knowledge is obtained that promotes or enhances the conservation values and sound silvicultural management of the Premises. The Forestry Plan, and subsequent updates or amendments, shall be submitted to Grantee. A Forestry Plan for the Premises shall be completed within two (2) years from the date this Conservation Restriction is recorded at the Worcester South County Registry of Deeds, or before any harvest of forest products occurs on the Premises. All forest product-harvesting operations shall be conducted in accordance with applicable law.

8. Hiking, cross-country skiing and other non-motorized passive outdoor recreational and educational activities.
9. Use of vehicles and other motorized equipment incident to farming and forestry activities contemplated herein, including but not limited to tractors, trucks, skidders, balers, spreaders and planters.
10. The installation, construction, and placement of permanent underground and temporary above-ground pumps, conduits, hoses, and other equipment associated with agricultural irrigation.
11. Limited and selective pruning and clearing for non-commercial purposes incidental to (a) forest fire prevention or management; (b) unpaved trail establishment, marking, and maintenance; (c) control or prevention of an imminent hazard to structure or life; (d) control or prevention of a grave or formidable disease; (e) control and removal of invasive or exotic species; (f) collection of firewood exclusively for the personal use by Grantors or their successors or assigns; or (g) otherwise to preserve the present condition of the Premises. To the extent that pesticides, herbicides, and fungicides are used in conjunction with these activities, such use shall be in accordance with, and subject to, the provisions of Section 6 (d) above.
12. Erection of signs by Grantors or Grantee for the purposes of noticing allowed and prohibited uses such as, but not limited to, trespassing, hunting for pest control management, trails, and trail locations, sale of the Premises, and sale of horticultural and agricultural products, but only to the extent authorized by law.
13. Horseback riding by the Grantors and their guests, not by the general public; and subject to the prior notice and approval of the Conservation Commission, horseback riding by others; provided, however it is accessory to a related use on the Farmstead and does not adversely impact public access, public trails and use, and is not detrimental to the intent and purpose of this Conservation Restriction. Horseback riding on the public walking trails is prohibited except for trail crossings.



#### 14. Other Acts and Uses:

All acts and uses not explicitly prohibited are permitted, provided that they do not materially impair the conservation values and/or conservation purposes of this Conservation Restriction, and further subject to notice and approval from the Conservation Commission pursuant to Section VI below if said uses are not expressly permitted.

### VI. NOTICE AND APPROVAL

#### (A) Notice of Intention to Undertake Certain Permitted Actions

Grantors agree to notify Grantee, in writing, before exercising any right described under Section IV and Section V as a permitted use that explicitly requires notice to Grantee. The purpose of requiring such notice is to afford Grantee an adequate opportunity to monitor the activities in question to ensure that they are designed and carried out in a manner that is consistent with the Purposes of this Conservation Restriction. Whenever notice is required, Grantors shall notify Grantee in writing as provided in Section XVII (H) below not less than forty-five (45) days prior to the date Grantors intend to commence the activity that is subject to the notice, provided that Grantee receive the request at least two (2) days prior to a meeting at which a quorum is present. The notice provided to Grantee shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the Purposes of this Conservation Restriction. Failure of the Grantor to notify Grantee as described and required constitutes a material breach of the Conservation Restriction.

#### (B) Grantee Approval

Where Grantee's approval is required, Grantee's approval shall not be unreasonably withheld. Grantee shall grant or withhold its approval in writing within forty-five (45) days of receipt of Grantor's written request therefore, provided that said forty-five (45) days is after a meeting at which a quorum is present and further provided they receive the request at least two (2) days prior to the meeting. Grantee's approval may be withheld upon a reasonable determination by Grantee that the action as proposed would be inconsistent with, or detrimental to, the Purposes of this Conservation Restriction. Failure of Grantee to respond in writing within such forty-five (45) days shall be deemed to constitute approval by Grantee of the request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after the passage of time.

## **VII. LEGAL REMEDIES OF THE GRANTEE:**

### **(A) Notice of Violation to Grantor and Opportunity to Cure**

If the Grantee finds what they believe is a violation, Grantee shall immediately notify Grantors in writing of the nature of the alleged violation. Upon receipt of this written notice, Grantors shall either (a) immediately cease the activity constituting the violation and promptly restore the property to its condition prior to the violation to the reasonable satisfaction of Grantee or (b) immediately cease the activity and provide a written explanation to Grantee of the reason why the alleged violation should be permitted.

If the condition described in clause (b) above occurs, both parties agree to attempt to resolve any dispute in accordance with the Dispute Resolution provisions of Section VII. (B) below.

### **(B) Dispute Resolution.**

Either party may, at any time, call a meeting for the purpose of resolving disputes or problems arising under this Conservation Restriction. Each party shall make every reasonable effort to resolve problems or disputes to the satisfaction of both parties.

Notwithstanding the foregoing, in the event of a dispute pursuant to this Conservation Restriction, the parties agree that prior to pursuing other available remedies, but excluding the giving of notices of default by the other party, they will attempt to negotiate resolution of their dispute directly with each other. If negotiation is unsuccessful, they agree to participate in at least three hours of mediation to be facilitated by a mediator mutually acceptable to them and under the mediation procedures set by the mediator. If no such mutually acceptable mediator is agreed upon, the Massachusetts Real Estate Bar Association or another similarly qualified mediation provider shall be requested to designate such a mediator. The mediation session shall be conducted within thirty days of the date on which a mediator receives the request and agrees to mediate. The cost of such mediation shall be shared equally by the parties.

### **(C) Legal and Injunctive Relief**

The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain monetary, injunctive, and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to its condition prior to the time of the injury complained of (it being agreed that Grantee may have no adequate remedy at law), and shall be in addition to, and not in limitation of, any other rights and remedies available to Grantee.

### **(D) Reimbursement of Costs of Enforcement**

Grantors, and their successors and assigns, covenant and agree to reimburse Grantee for all reasonable costs and expenses (including without limitation counsel fees) incurred in

enforcing this Conservation Restriction or in taking reasonable measures to remedy or abate any violation thereof, provided that a violation of this Conservation Restriction is acknowledged by Grantors or is determined by a court of competent jurisdiction to have occurred.

(E) Hold Harmless Clause

To the fullest extent authorized by law, Grantors, their successors and assigns, hereby release and agree to hold harmless, defend with counsel, and indemnify Grantee and its elected officials, officers, employees, agents, and contractors, and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties" and individually an "Indemnified Party") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Premises, regardless of cause, unless due solely to the wanton, willful, or reckless conduct of any of the Indemnified Parties; (2) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, or requirement, by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Premises; (3) the presence or release in, on, from, or about the Premises, at any time, of any substance now or hereafter defined, listed or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement (including without limitation M.G.L. c.21E), as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, except to the extent caused solely by an Indemnified Party, in which case this indemnity obligation shall not apply to the Indemnified Party (or Parties) causing such condition. By its acceptance of this Conservation Restriction, neither the Grantee nor any other Indemnified Party undertakes or assumes any liability or obligation relating to the condition of the Premises, including with respect to compliance with hazardous materials or other environmental laws and regulations.

(F) Insurance Clause

The Grantors shall keep in full force and effect and provide the Grantee with evidence that they carry general liability insurance against such risks and in such amounts readily available and reasonably acceptable to the Grantee's Insurance Advisors which will be reviewed on a yearly basis commencing on June 1, 2007. The Grantee shall be named as the primary additional insured on said policy and the certificate of insurance furnished to the Town yearly commencing on June 1, 2006.

(G) Severability Clause

If any portion of this Conservation Restriction shall to any extent be held invalid, the remainder shall not be affected and the surviving provisions shall be interpreted as consistently as possible with the original intent of the parties.



## (H) Non-Waiver

Any election by the Grantee as to the manner and timing of its right to enforce this Conservation Restriction or otherwise exercise any of its rights hereunder shall not be deemed or construed to be a waiver of such rights in the future.

## VIII. ACCESS:

- a) The Grantee through its duly designated elected officials, officers, employees, agents, and contractors shall have the right to enter the Premises, following reasonable notice to Grantors and at reasonable times and in a reasonable manner, for the purpose of inspecting the Premises, determining compliance with the terms of this Conservation Restriction, and preventing, abating, or remedying any violations thereof.
- b) This Conservation Restriction also grants to the Grantee the right, but not the obligation, at its sole expense, to maintain the open fields on the Premises and the open pastoral vistas along Chestnut Hill Road, provided, however, Grantors are first notified in writing at least thirty (30) days prior to the exercise of such right, with said notice being provided in writing including the scope, nature, and extent of proposed activities, and furthermore that such activities are subject to the written approval of Grantors, which approval shall not be unreasonably withheld or delayed.
- c) Affirmative Obligations of the Parties
  - 1) Grantors and subsequent landowners have the obligation, under this agreement, to adequately maintain all public trails, which includes maintenance and other obligations as are described in the Management Plan and in Exhibit D, Chestnut Hill Farm Trails Plan. Grantee shall have the right, but not the obligation, at its sole expense and with prior notification of Grantors, to maintain but not to substantially alter, except with the prior written permission of Grantors, said publicly-accessible trails on the Premises.
  - 2) Exclusively within the "Parking Area" as shown on a plan of land (entitled "Farmstead and Parking Area Plan of Land in Southborough, Mass."; dated May, 2006) filed with the Grantee and attached hereto in reduced form as Exhibit B (hereinafter referred to as the "Parking Area"), this Conservation Restriction also grants to Grantee, in consultation with and subject to the approval of the Grantors, not to be unreasonably withheld, the right and an affirmative obligation to construct, maintain, repair, and replace one (1) unpaved parking lot suitable for no more than ten (10) vehicles explicitly to provide public access to the public trails, provided however, that Grantors are notified in writing at least thirty (30) days prior to the commencement of construction activities. Once constructed, the general public shall have the right to park in said parking lot for the explicit purpose of accessing the Premises for Passive Recreation and Educational Activities, provided, however, that

such parking is allowed only during the period between dawn and dusk except for occasional, group activities at night as organized and sponsored by Grantee, its successors, or assigns with prior written notice to the Grantors. The excavation and removal from or the import, placement, and fill to the Parking Area of soil, gravel or other mineral resource or natural deposit shall be authorized only to the limited extent as may be required to construct said Parking Area and maintain good drainage or soil conservation practices; or for other permissible uses of the Parking Area. Pruning, clearing, and planting of vegetation, including landscaping, to the limited extent as may be required to construct said Parking Area, to provide adequate screening from nearby residences, or to demarcate the boundary of said Parking Area is permitted. The installation and maintenance of fencing or stone walls explicitly for demarcating the boundary of said Parking Area is permitted. The erection of signs for any purpose related to the Parking Area or to the public access to the Premises is permitted.

- 3) This Conservation Restriction also grants to the general public the right to enter upon and to re-enter the Premises excepting the Farmstead for the purpose of Passive Recreation and Educational Activities. Public access shall be limited to the marked trails as shown on the sketch plan entitled "Chestnut Hill Farm Trails" attached hereto as Exhibit D, except for the period between November 15 through March 1 of each year, when public access for Passive Recreation and Educational Activities shall be allowed anywhere on the Premises, provided there is sufficient snow cover to prevent damage by erosion. Said trails may be added to, relocated, or discontinued only by the mutual agreement of Grantors and Grantee. The terms and conditions of public access shall be determined by mutual agreement of Grantors and Grantee, in accordance with a recreation management plan (hereinafter the "Management Plan").
- 4) The Management Plan shall be prepared by the Grantors in consultation with Grantee, and shall be reviewed every five years and upon change of property ownership and updated or revised as necessary (as described in said Management Plan). The Management Plan, and subsequent updates or amendments, shall be submitted to Grantee. Said Management Plan shall be reviewed and updated (if necessary), within 90 days, upon each change of landownership, with direct consultation and input of both landowner and Grantee. Grantors reserve the right to close the trails from time to time for the purposes of maintaining public safety or to protect agricultural crops or wildlife, in consultation with Grantee. None of Grantors' activities permitted pursuant to this section shall impair or frustrate permitted access by the public, except for temporary periods necessary to ensure public safety or to protect agricultural crops or wildlife.

## **IX. EXTINGUISHMENT:**

### **(A) Grantee's Receipt of Property and Development Rights**

Grantors and Grantee agree that this Conservation Restriction gives rise for purposes of this paragraph to a real property right, immediately vested in Grantee, with a fair market value that is at least equal to the proportionate value that this Conservation Restriction, determined

at the time of the transfer, bears to the value of the unrestricted Premises at that time, and represents all development rights, excluding those allowed within the Farmstead, associated with the Premises.

**(B) Value of Grantee's Property Right**

Such proportionate value of Grantee's property right shall remain constant.

**(C) Right of Grantee to Recover Proportional Value at Disposition**

If any occurrence ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, then Grantee, on a subsequent sale, exchange or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds equal to such proportionate value, subject, however, to any applicable law which expressly provides for a different disposition of proceeds.

**(D) Grantor/Grantee Cooperation Regarding Public Action**

Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority other than the Town, then Grantors and Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action.

**(E) Allocation of Expenses upon Disposition**

All related expenses incurred by Grantors and Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between Grantors and Grantee in shares equal to such proportionate value.

**(F) Continuing Trust of Grantee's Share of Proceeds of Conservation Restriction Disposition**

Grantee shall use its shares of the proceeds in a manner consistent with the conservation purposes of this grant.

**X. ASSIGNABILITY:**

**(A) Running of the Burden**

The burdens of this Conservation Restriction shall run with the Premises in perpetuity, and shall be enforceable against Grantors and their successors and assigns holding any interest in the Premises.



**(B) Execution of Instruments**

Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; Grantors, on behalf of themselves and their successors and assigns, appoint Grantee their attorney-in-fact to execute, acknowledge and deliver any such instruments on their behalf for such specific purposes. Without limiting the foregoing, Grantors and their successors and assigns agree themselves to execute any such instruments upon reasonable request.

**(C) Running of the Benefit**

The benefits of this Conservation Restriction shall be in gross and shall not be assignable by Grantee, except in the following instances and from time to time:

1. Where as a condition of any assignment, Grantee requires that the Purposes of this Conservation Restriction continue to be carried out; and
2. The assignee, at the time of assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and under Section 32 of Chapter 184 of the General Laws as an eligible donee to receive this Conservation Restriction directly; and
3. Grantee complies with the provisions of Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

**XI. SUBSEQUENT TRANSFERS:**

Grantors agree to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Premises, including, without limitation, a leasehold interest. Grantors further agree to give written notice to Grantee of the transfer of any interest at least twenty (20) days prior to the date of such transfer. Failure of Grantors to provide such notice shall not impair the validity of this Conservation Restriction or limit its enforceability in any way. Nothing in this section shall be interpreted as constituting a right by the current or subsequent grantors to subdivide the premises in violation of Section IV, A (6) above, and any prohibited division or subdivision is agreed to be a material breach of intent and purposes of this Conservation Restriction.

**XII. AVOIDANCE OF MERGER:**

No assignment of Grantors' or Grantee's interest in the Premises or acquisition of any additional interest in the Premises by Grantors or by Grantee shall cause this Conservation Restriction to merge with the fee or have the effect of causing any of the terms or provisions hereof to be rendered unenforceable by reason of so-called doctrine of "merger."

**XIII. ESTOPPEL CERTIFICATES:**

Upon request by Grantors, Grantee shall within twenty (20) days execute and deliver to Grantors any document, including an estoppel certificate, which certifies Grantors' compliance with any obligation of the Grantors contained in this Conservation Restriction.

**XIV. EFFECTIVE DATE:**

This Conservation Restriction shall be effective when Grantors and Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the General Laws have been obtained, and it has been duly recorded.

**XV. RECORDATION:**

Grantors shall record this instrument in timely fashion in the Worcester South Registry of Deeds, and shall provide Grantee with notice of the recording information for the instrument.

**XVI. TERMINATION OF RIGHTS AND OBLIGATIONS:**

Notwithstanding anything to the contrary contained herein, the rights and obligations under this Conservation Restriction of any party holding any interest in the Premises terminate upon and to the extent of such party's transfer of its interest, except that liability for acts or omissions occurring prior to transfer, and liability for the transfer itself if the transfer is in violation of this Conservation Restriction, shall survive the transfer.

**XVII. MISCELLANEOUS:****(A) Controlling Law**

The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.

**(B) Liberal Construction**

Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in favor of the grant to effect the Purposes of this Conservation Restriction and the policy and purpose of Mass. Gen. Laws Chapter 184, Sections 31-33. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purposes of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.

**(C) Entire Agreement**

This instrument sets forth the entire agreement of the parties with respect to the Conservation Restriction and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Restriction, all of which are merged herein.

**(D) Joint Obligation**

The obligations imposed by this Conservation Restriction upon the parties that together comprise "Grantors" shall be joint and several.

**(E) Captions**

The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

**(F) Pre-existing Rights of the Public**

Approval of this Conservation Restriction pursuant to M.G.L. Chapter 184, Section 32 by any municipal officials and by the Secretary of Environmental Affairs is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

**(G) Compliance with Applicable Law**

The exercise of any right reserved under this Conservation Restriction by the Grantors or their successors and assigns shall be in compliance with the then-current Zoning By-Law of the Town of Southborough, the state Wetlands Protection Act (Massachusetts General Laws Chapter 131, Section 40, as amended) and all other applicable federal, state, and local laws.

**(H) Amendments**

If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, the parties may jointly amend this Conservation Restriction; provided that no amendment shall be allowed that will affect the qualification of this Conservation Restriction or the status of the Grantee under any applicable laws, including Section 170 (h) of the Internal Revenue Code of 1986, as amended, Article 97 of the Massachusetts Constitution or Sections 31-33 of Chapter 184 of the General Laws of Massachusetts. Any such amendment shall be consistent with the Purposes of this Conservation Restriction, shall not affect its perpetual duration, shall not permit additional development or improvements to be constructed on the restricted Premises other than development or improvements permitted by this Conservation Restriction on its effective date, and shall not permit any impairment of the significant conservation values of the restricted Premises. Any such amendment shall be recorded in the Worcester County Registry of Deeds and must be approved by the Grantor, Grantees, municipal officials and the Massachusetts Secretary of Environmental Affairs.



## (I) Notices

Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows or to any other entity or individual designated by Grantor or Grantee, or their successors, by written notice given in accordance with this section:

To Grantors:           The Philip C. Beals Trust  
2 Chestnut Hill Road  
Southborough, MA 01772

With a copy to:       Thomas R. Mountain, Esq.  
Mountain, Dearborn & Whiting, LLP  
370 Main Street  
Worcester, MA 01608

To Grantee:

Town of Southborough  
Conservation Commission  
17 Common Street  
Southborough, MA 01772

With a copy to:

Town Counsel  
Town of Southborough  
17 Common Street  
Southborough, MA 01772

Executed under seal this 19<sup>th</sup> day of May, 2006.

Philip C. Beals

Philip C. Beals, *Trustee*  
Hereunto Duly Authorized

Thomas R. Mountain

Thomas R. Mountain, *Trustee*  
Hereunto Duly Authorized

Commonwealth of Massachusetts

Worcester, ss.

On this 19<sup>th</sup> day of May, 2006, before me, the undersigned Notary Public, personally appeared the above-named Philip C. Beals and Thomas R. Mountain, Trustees of the Philip C. Beals Trust, proved to me by satisfactory evidence of identification, being (check whichever applies): ☐ driver's license or other state or federal governmental document bearing a photographic image, ☐ oath or affirmation of a credible witness known to me who knows the above signatories, or ☐ my own personal knowledge of the identity of the signatories, to be the people whose names are signed above, and acknowledged the foregoing to be signed by them voluntarily for its stated purpose.

Henry W. Beale  
Notary Public Henry W. Beale

My Commission Expires: 12/20/07

Henry W. Beale  
Notary Public Henry W. Beale

My Commission Expires: 12/20/07

## Approval By Board of Selectmen:

We, the undersigned, being a majority of the Board of Selectmen of the Town of Southborough, Massachusetts, hereby certify that at a meeting duly held on May 18, 2006 the Selectmen voted to approve and accept the foregoing Conservation Restriction to the TOWN OF SOUTHBOROUGH pursuant to Massachusetts General Laws Chapter 184, Sections 31-33.

Roger W. Challen <sup>SELECTMAN</sup>  
Roger W. Challen, its Chairman

Bonnie J. Phaneuf <sup>Selectman</sup>  
Bonnie J. Phaneuf

William J. Boland <sup>Selectman</sup>  
William J. Boland

Commonwealth of Massachusetts

WORCESTER, ss.

On this 18<sup>th</sup> day of MAY, 2006, before me, the undersigned Notary Public, personally appeared the above-named Bonnie J. Phaneuf, William J. Boland, and Roger W. Challen, Selectmen of the Town of Southborough, proved to me by satisfactory evidence of identification, being (check whichever applies): ☐ driver's license or other state or federal governmental document bearing a photographic image, ☐ oath or affirmation of a credible witness known to me who knows the above signatory, or ☒ my own personal knowledge of the identity of the signatory, to be the people whose names are signed above, and acknowledged the foregoing to be signed by them voluntarily for its stated purpose.

Aldo A. Cipriano  
Notary Public

My Commission Expires: 9/6/07



Approval by Secretary of Environmental Affairs,  
Commonwealth of Massachusetts:

The undersigned, Secretary of the Executive Office of Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction to THE TOWN OF SOUTHBOROUGH has been approved in the public interest pursuant to M.G.L. Ch. 184, 31-33.

*Stephen R. Pritchard*

Stephen R. Pritchard  
Secretary of Environmental Affairs  
Executive Office of Environmental Affairs

*5/23/06*

Date

Commonwealth of Massachusetts

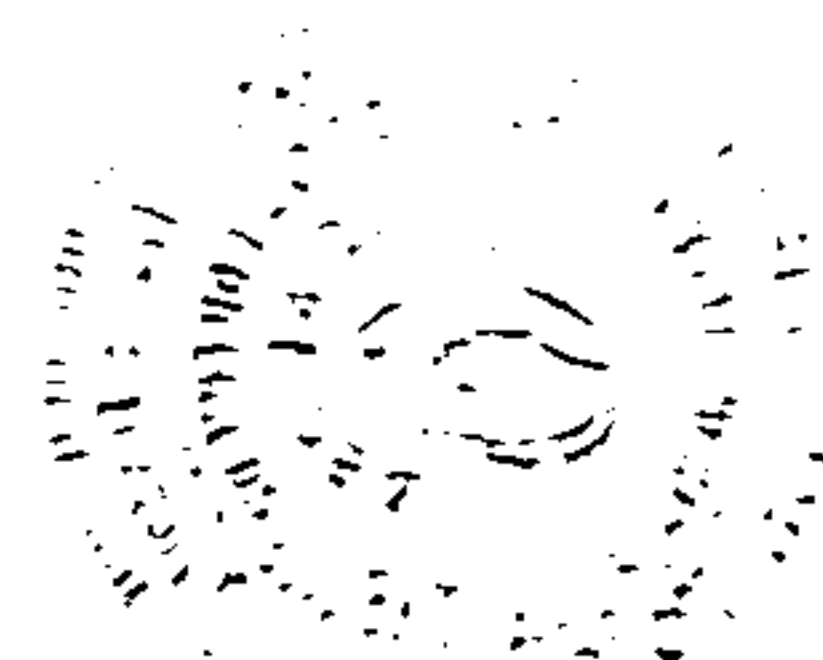
*SUFFOLK*, ss.

On this *23<sup>rd</sup>* day of *May*, 2006, before me, the undersigned Notary Public, personally appeared the above-named Stephen R. Pritchard, Secretary of the Massachusetts Executive Office of Environmental Affairs, proved to me by satisfactory evidence of identification, being (check whichever applies): ☐ driver's license or other state or federal governmental document bearing a photographic image, ☐ oath or affirmation of a credible witness known to me who knows the above signatory, or ☐ my own personal knowledge of the identity of the signatory, to be the person whose name is signed above, and acknowledged the foregoing to be signed by her voluntarily for its stated purpose.

*Nicole S. [Signature]*

Notary Public

My Commission Expires:



*Chestnut Hill Farm  
Conservation Restriction*

Exhibit List

- |           |  |
|-----------|--|
| Exhibit A | Legal Description  |
| Exhibit B | Farmstead and Parking Area Plan of Land in Southborough, Mass. |
| Exhibit C | Guidelines and Plan Elements for Forestry Plan                 |
| Exhibit D | Chestnut Hill Farm Trails Plan                                 |

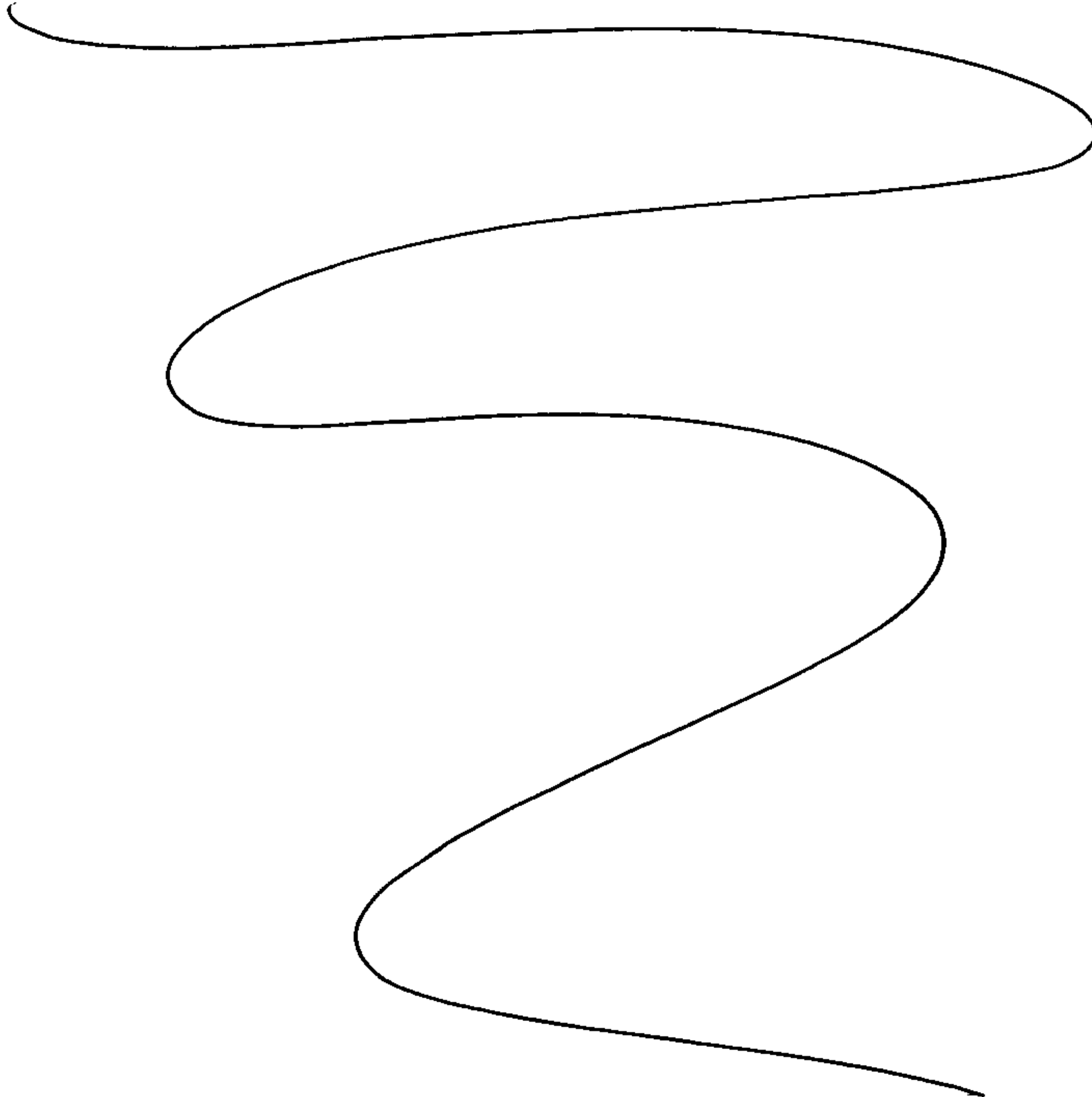


Exhibit ATract I

The land in Southborough, Massachusetts on the easterly side of Chestnut Hill Road shown as Parcel A on a plan entitled "Plan of Land in Southborough, Mass. Property of Charles R. Donaldson" dated Aug. 29, 1960, surveyed by W.F. Drake C.E. recorded in Plan Book 250 Plan 38. Containing 108.30 acres.

Excepting therefrom the parcel described in a deed to David C. Ekberg and Sandra N. Ekberg dated October 18, 1974 recorded in Book 5605 Page 219, which parcel contains 16,487 sq. ft. and is shown on a plan recorded in Plan Book 404 Plan 35.

Tract II

The land in Southborough, Massachusetts on the northerly side of Main Street shown as Parcel #B-2 on a plan entitled "Plan of Land in Southborough, Mass. Owned by Philip C. & Elaine W. Beals" dated August 6, 1965 surveyed by Nashoba Survey Co. Inc. recorded in Plan Book 292 Plan 78. Containing 42,462 s.f.

For title see deeds recorded in Book 4725 Page 594 and Book 4593 Page 444.



Exhibit B. Farmstead and  
Parking Area  
Plan of Land in Southborough, MA  
Date: May 2006

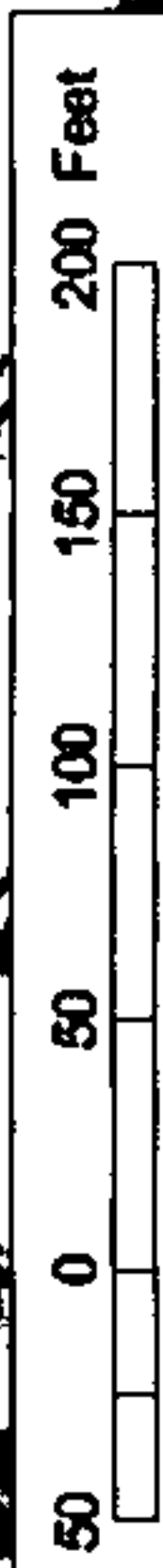
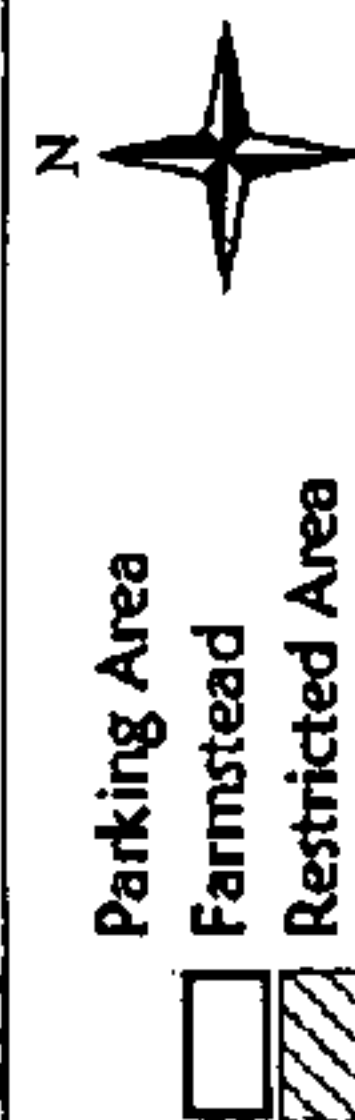


Parking Lot, Beginning at northwest corner:

- 1) North 45d East - 1 foot
- 2) North 44d East - 51 feet
- 3) South 45d East - 114 feet
- 4) South 44d West - 51 feet
- 5) North 45d West - 114 feet

Farmstead, beginning at northwest corner:

- 1) North 61d East - 380 feet
- 2) South 32d East - 641 feet
- 3) South 65d West - 210 feet
- 4) North 74d West - 4 feet
- 5) South 68d West - 51 feet
- 6) North 24d West - 42 feet
- 7) South 67d West - 25 feet
- 8) North 36d West - 14 feet
- 9) North 65d East - 23 feet
- 10) North 21d West - 78 feet
- 11) South 85d West - 45 feet
- 12) South 66d West - 94 feet
- 13) North 32d West - 274 feet
- 14) North 34d West - 177 feet





## EXHIBIT C

### **Forestry Plan Guidelines and Required Plan Elements**

#### **I. Guidelines**

The goal is to practice sustainable forest management on the Premises, which recognizes the importance of all ecological components and values and incorporates them into management policies, plans, and decisions. The following subsections are components to be considered when practicing sustainable forest management.

Grantors and Grantee recognize that their understanding of forest ecosystems and how they function is incomplete. It is important to periodically incorporate relevant advances in scientific knowledge into the sustainable forest management program.

#### **Sustainable Timber Production**

Grantors will use silvicultural systems, which enhance or maintain the value of the timber asset and provide for a sustained yield of forest products while recognizing that ecological, aesthetic, wildlife, and other non-timber values are important components of the forest. Silvicultural prescriptions should be based on sound scientific knowledge and tailored to individual stand conditions. They will strive to maintain stands in a well-stocked, productive condition and promote the diversity of natural forests in both species and structure. The full range of silvicultural prescriptions are available for use on the Premises where appropriate, and include even-aged and uneven-aged systems such as seed tree, shelterwood, clearcut, individual selection and group selection harvest systems. Management of the timber resource shall not eliminate key ecosystem elements.

#### **Forest Diversity**

Grantors' goal is to generate sustained yields of forest products from the forest in an economical manner over time while maintaining forest diversity. Sustainable forestry requires that structural and compositional components be maintained in a vigorous and productive condition. The Forestry Plan will identify areas of unique importance and employ means for assuring their retention.

#### **Riparian Habitats**

The Grantors' goal is to maintain functional watercourses, wetlands and wildlife habitat with the retention of riparian ecosystems. Best management practices shall be employed to minimize impacts to these areas.

#### **Wildlife Management**

The Grantors' goal is to generate sustainable yields of forest products in an economical manner while maintaining healthy wildlife habitat. Wildlife management practices are routinely incorporated into timber management activities to retain or create desirable features including riparian habitat, wildlife cavity trees, mast availability, logs and brush for shelter, promoting

vertical and horizontal diversity, vernal pools, coarse woody debris and featured species management. Wildlife management considers all species of wildlife, beyond game and socially important species.

#### Unique or Fragile Natural Areas

The Grantors' goal is to maintain functional ecosystems that include unique or fragile natural areas. Certain conservation agencies that monitor rare, threatened, endangered, or special concern species are valuable partners in this effort and may help identify these locations and provide technical advice about management practices.

#### Pesticide and Herbicide Use

The Grantors' goal is to implement management practices designed to minimize or eliminate use of pesticides. In all cases the use of pesticides or herbicides will be conducted in compliance with all local, state and federal laws and regulations, and subject to any applicable notice and approval provisions of the Conservation Restriction.

#### Invasive species

The Grantors' goal is to reduce or eliminate these species from the Premises where appropriate and possible. Mechanical and chemical means of control are viable tools to reduce the threat of invasive species. The introduction and spread of non-native plants with invasive tendencies is a current and growing concern.

#### Aesthetic Resources

The Grantors' goal is to maintain aesthetic quality in order to maintain or enhance the value of the Premises. Aesthetic quality is important to maintaining the value of the forest asset.

## **II. Required Plan Elements**

The Forestry Plan shall include, at a minimum, the following elements:

- (a) The Premises' current owner(s), including their then current mailing address and telephone number(s),
- (b) The property tax assessor's map number and lot/parcel number, the Premises' total acreage, and acreage subject to this, or any other restriction or easement;
- (c) The deed book and page from the land records, and reference to any approved or pending M.G.L. 81P ("approval not required") survey plan, subdivision plan, or any other division of the Premises' ownership interests;
- (d) A history of the Premises and its management, including forestry or agricultural activities engaged in during the previous ten years;
- (e) An inventory of forest resources, including: species, quality, age class distributions, growth rates, potential harvest volumes and values;
- (f) A forest type map, an appropriately scaled and accurate map, which shall delineate: the Premises' boundaries, forest types, estimated locations of any threatened or endangered animal and plant species, unique (geological, hydrological, historical, and cultural) features, existing roads and other access to the Premises, soil types, topography, and aspect;



- (g) A description of the Premises' abutters and any other protected land(s), including areas protected for natural, scenic, forested, agricultural, historical, open space, conservation, or wildlife purposes within a reasonable distance of the Premises;
- (h) A description of the Grantors' management objectives and practices for the following ten (10) year period, which shall provide for the maintenance and improvement of the overall quality of the timber resource, the maintenance or improvement of soil productivity and the conservation of water quality;
- (i) The Forestry Plan shall be reviewed and updated every ten years after consultation with a licensed professional forester or by another individual with written approval by Grantee.
- (j) Said Forestry Plan shall expressly state that it is consistent with the Purposes of this Conservation Restriction.